



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Miss Snjezana Gacevic

v

Rockley Dene Homes Limited
(Cherry Hinton Care Home)

Heard at: Cambridge (by CVP)

On: 21 June 2021

Before: Employment Judge Tynan (sitting alone)

Appearances

For the Claimant: In person

For the Respondent: Ms Grace Boorer, Counsel

JUDGMENT

The Claimant's remaining complaint that the Respondent made unlawful deductions from her wages is dismissed on the grounds that the Employment Tribunal has no jurisdiction to determine the complaint.

REASONS

1. The Claimant claims that the Respondent made unlawful deductions from her wages. Her complaints that she was discriminated against on grounds of disability and that she was owed holiday pay were dismissed by Employment Judge Tuck QC at a Preliminary Hearing on 1 February 2021.
2. Sections 23(2) and (3) of the Employment Rights Act 1996 provide that a complaint of unlawful deductions from wages must ordinarily be pursued within three months of the date of the payment of the wages from which the unlawful deduction is alleged to have been made.
3. The Claimant was employed the Respondent as a Carer from 1 April 2018 to 5 January 2020. However, she was suspended on full pay on medical grounds with effect from 20 June 2019 following concerns as to her mental wellbeing. That suspension was lifted on 25 July 2019, albeit the Claimant did not then return to work. She was not paid from 26 July 2019 to

3 September 2019, in circumstances that are in dispute. Whilst the chronology of events after 3 September 2019 was not entirely clear or necessarily agreed by the Claimant, having taken some care to go through this with the Claimant and to understand what sums she was claiming, the Claimant confirmed to the Tribunal that her wages claim is limited to the period 26 July 2019 to 3 September 2019 and that she had received all sums due to her after that date through to the termination of her employment in January 2020. The claimed wages would otherwise have been paid in the August, September and October 2019 pay periods.

4. Amanda Hardy made a statement on behalf of the Respondent. I gave leave at the Hearing for that statement to be amended in accordance with a mark up which had been filed with the Tribunal and provided to the Claimant ahead of the Hearing. From Ms Hardy's statement, it seems that the Claimant was paid in arrears on the 8th of each month in respect of her work in the previous month. Insofar as the Claimant alleges that there were unlawful deductions from her wages in the period 26 July to 3 September 2019, the last of those deductions would have been on 8 October 2019 relating to 1 – 3 September 2019.
5. Accordingly, the Claimant should have notified her potential wages claim to Acas under the Early Conciliation scheme by no later than 7 January 2020. Instead, the Claimant contacted Acas on 20 February 2020 to notify it of her potential claims against the Respondent.
6. Section 23(4) of the Employment Rights Act 1996 provides that a Tribunal may nevertheless consider an otherwise out of time complaint where it is satisfied that it was not reasonably practicable for a complaint to be presented before the end of the relevant three-month period, provided it was presented within such further period as the Tribunal considers reasonable. An employee has the burden of satisfying a Tribunal in this regard and will ordinarily address this issue in a witness statement or other evidence to the Tribunal. Although the Claimant had submitted a statement for the Hearing on 21 June 2021, the statement was effectively silent on the issue. I therefore took the opportunity during the Hearing to explore this aspect with the Claimant.
7. Notwithstanding Employment Judge Tuck QC's Judgment of 1 February 2021 that the Claimant was not disabled within the meaning of the Equality Act 2010, I note that the Claimant was on a medical suspension from 20 June 2019 to 25 July 2019 and thereafter absent from work, being paid statutory sick pay from 3 September 2019 until 3 January 2020.
8. However, it is also the case within these proceedings that the Claimant asserts that she was fit to return to work in 2019 and that her GP had agreed with her this was the case, even if the GP had not issued a Fit Note to that effect. The Claimant additionally confirmed to the Tribunal that she was actively seeking alternative employment during Autumn 2019 and indeed that she had secured a new job. She was somewhat vague in her evidence as to whether she had commenced in that new role whilst

still employed by the Respondent, or only after she left its employment in January 2020. Although she completed form ET1 on the basis that she had started another job on 12 November 2019, the Claimant suggested in her evidence at Tribunal that this was "*probably inaccurate*", but otherwise she was unclear as to what date she commenced any new job. She offered the view that she did not think the fact that she was working effects the employer, i.e. the Respondent. She ventured that she was certainly working elsewhere by January 2020.

9. The Claimant told the Tribunal that she had sought advice from the Citizen's Advice Bureau and that this was prior to Christmas 2019. She effectively did not answer the question put to her by Ms Boorer as to the matters discussed with Acas. However, I find on the balance of probabilities that she consulted Acas about her right or otherwise to pay whilst absent from the workplace and further that Acas would have advised her as to the applicable time limits for bringing any Employment Tribunal claim.
10. Bearing in mind that the burden of proof is on her, the Claimant has not established on the balance of probabilities that it was not reasonably practical for her to present her Employment Tribunal complaint within time. On the contrary, she believed over the course of Autumn 2019 that she had been prevented from working in circumstances where she considered she was fit to work, that she believed she had not been paid what was due to her and that when the situation remained unresolved she sought advice from the Citizen's Advice Bureau.
11. In my Judgment the Claimant should and could reasonably have notified her complaints to Acas by 7 January 2020. In the circumstances her complaint is out of time and shall be dismissed on the basis that the Employment Tribunal has no jurisdiction to determine the matter.

15 July 2021

Employment Judge Tynan

Sent to the parties on: ..2/8/21..

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For the Tribunal Office